

Missouri Hazardous Waste Management Commission Meeting
August 17, 2006
Agenda Item #3

Ford Motor Company (MOD007118078)
Claycomo, Clay County

Presented by: Tom Judge, Compliance/Enforcement

Issue: The company has requested a variance from the Hazardous Waste Management Regulations in order to comply with a new standard, available in the federal regulations, but not yet in the Missouri regulations, where Clean Air Act standards are met in lieu of standards to reduce solvent vapor emissions from hazardous waste storage tank systems. The Hazardous Waste Program recommends that this variance be granted.

Information:

- The facility has been operating under a similar variance, issued February 10, 2005.
- The facility submitted a perfected variance petition on March 6, 2006. The program issued a recommendation to approve the petition to the Commission, and published a public notice to that effect on May 3, 2006. The public comment period closed on June 3, 2006, and no comments or requests for a hearing were received.
- A three-page draft "Recommendation and Final Order" concerning the variance petition is enclosed. Unless the Commission wishes to make any changes prior to taking a vote, a final version of this document will circulate for all attending Commissioners to sign if the Commission votes to approve the program's recommendation at this meeting.

Recommended Action: Commission votes to approve the program's recommendation to grant the variance petition for the Ford Motor Company in Claycomo.

The Suggested Motion Language:

"I move that the Commission vote to approve the Recommendation and Final Order concerning a variance for the Ford Motor Company plant in Claycomo, and that the Commission sign the Final Order if approved."

Hazardous Waste Program's Recommendation to
The Missouri Hazardous Waste Management Commission on
Ford Motor Company - Claycomo Assembly Plant
Variance Petition ENF-06-2V and Order HW-06-2V

Introduction

Ford Motor Company - Claycomo Assembly Plant (Ford) has requested a variance from 40 CFR Part 265 Subpart BB, as incorporated and referenced in the Missouri Hazardous Waste Management Regulation 10 CSR 25-5.262(1) and 10 CSR 25-7.265(1), and the referenced federal rules in 40 CFR 262.34(a)(ii), 40 CFR 265.202, and 40 CFR Part 265 Subpart BB. The Missouri Department of Natural Resources received the completed variance petition from Ford on March 6, 2006. The department plans to submit the variance petition to the Missouri Hazardous Waste Management Commission (Commission) for its information at its meeting on June 15, 2006, pursuant to Section 260.405, Revised Statutes of Missouri (RSMo).

Ford is located on Highway 69 in Claycomo, Missouri. Ford manufactures the Ford F-series pickup truck, and the Ford Escape and Mazda Tribute sport utility vehicles. Ford is currently working under a February 6, 2003, Consent Agreement and Final Order with the U.S. Environmental Protection Agency (USEPA). In addition to the Claycomo Assembly Plant, the Consent Agreement includes Ford automobile assembly plants in the St. Louis area, Georgia, New Jersey, Michigan, Ohio, Kentucky, Virginia, Minnesota, and Illinois. The Consent Agreement addresses violations, including those regarding hazardous waste tank system requirements. Some of the violations involved lack of monitoring for vapor emissions from hazardous waste tank systems.

If the Commission grants the variance petition, Ford would be allowed to comply with the new Clean Air Act requirements and for the duration of the variance, will not be subject to the hazardous waste vapor emission requirements that are currently part of Missouri's regulations.

Background

On April 26, 2004, the USEPA published a regulation that allows manufacturers of light trucks and automobiles to comply with new Clean Air Act requirements instead of the hazardous waste tank vapor emissions requirements. Unless they obtain a variance, Ford must comply with the Missouri Hazardous Waste Management Regulations until Missouri adopts the new USEPA standards. Due to the amount of time required to change or adopt regulations, Ford is requesting a variance from 40 CFR Part 265 Subpart BB in order to begin operating under the new Clean Air Act requirements. The USEPA's rulemaking has determined that the burden of complying with these hazardous waste regulations exceeds the benefit in reduced air emissions that they could accomplish for plants that manufacture automobiles and light-duty trucks (see *Federal Register*, April 26, 2004, Volume 69, Number 80, pages 22602 through 22661, National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Final Rule).

The department has reviewed the variance petition and determined it to be a "non-substantive" petition, based on state statutory and regulatory criteria in Section 260.405.4, RSMo and 10 CSR 25-8.124(5)(B). The review was conducted by staff of the department's Hazardous Waste and Air Pollution Control Programs. These staff concur with the recommendation noted below. The department will complete all public notification procedures as required by 10 CSR 25-8(5)(C)2 and is submitting this recommendation to the Commission within 60 days of receipt of the variance petition, as required by 10 CSR 25-8.124(5)(C) and (D).

The Commission may grant a variance pursuant to state law (Section 260.405, RSMo), if certain

conditions are met. The department has reviewed each of these conditions and compared them with the facts of this case. The statute authorizes a variance:

1. “. . . if . . . compliance . . . will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people . . .” (260.405.1, RSMo).

As previously noted, above, the USEPA has determined that the burden of compliance with the hazardous waste regulations for these tank systems greatly exceeds the potential benefit of possible reductions in air emissions arising from those regulations. The department staff believes, based on technical analysis, that compliance with the requirement would impose a cost to Ford without producing a corresponding benefit or advantage to the people. Without this variance, Ford would have to either:

A. stop using automated painting equipment that generates hazardous paint and thinner waste; or

B. perform significant monitoring on piping systems that hold waste paint and solvent that flows through multiple levels of the plant before reaching a hazardous waste storage tank.

2. “Except [if] the effect of a variance will permit the continuance of a condition which unreasonably poses a present or potential threat to the health of humans or other living organisms” (260.405.1, RSMo).

The department staff does not believe that the effect of the variance will permit the continuance of a condition that unreasonably poses a present or potential threat to the health of humans or other living organisms. The amount of environmental releases from the tanks systems addressed by this regulation is relatively minimal and virtually indistinguishable from the larger amount of releases occurring from the plant. Moreover, the company will be required to comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) outlined in 40 CFR Part 63, Subpart IIII, to address these emissions.

3. “Any variance so granted shall not be so construed as to relieve the person who receives the variance from any liability imposed by other law for the commission or maintenance of a nuisance or damage to the property or rights of any person” (260.405.1, RSMo).

The department staff believes this variance will not be construed as to relieve Ford from any liability imposed by other law for the commission or maintenance of a nuisance or damage to the property or rights of any person. In fact, the department is recommending a variance be granted in part because Ford is subject to, and we expect Ford will be complying with, a separate set of air regulations that will provide adequate protection and controls.

In addition, the statute also indicates:

4. “In no event shall the variance be granted for a period of time greater than one year and shall not be renewable unless circumstances can be shown which preclude compliance within the one-year period of the variance and the renewal will not result in an unreasonable risk to the health of humans or the environment” (260.405.3, RSMo).

The department believes that Ford may want the Commission to grant additional one-year variances until the federal rules can be adopted by the state through our rulemaking process. This belief is based on the knowledge that the rulemaking schedule for incorporating changes to federal rules generally requires multiple years to complete. Further, Ford has indicated that it intends to comply with the USEPA's published regulation allowing manufacturers of light trucks and automobiles to comply with new Clean Air Act requirements (the USEPA published NESHAP on April 26, 2004) instead of the hazardous waste tank vapor emissions requirements (40 CFR Part 265 Subpart BB). Pursuant to the NESHAP, Ford is not required to demonstrate compliance with that standard until 2007.

5. Given the possibility that Ford may request additional variances, and the presumption in the law that variances not be granted for more than one year "unless circumstances can be shown which preclude compliance within the one-year period of the variance and the renewal will not result in an unreasonable risk to the health of humans or the environment," the department anticipates the issue of a variance being raised again in 2007 and possibly later.

Based on the reasons and justifications in the USEPA's rulemaking, the department staff believes that renewal will not result in an unreasonable risk to the health of humans or the environment. Ford may also be able to demonstrate circumstances that preclude compliance within the one-year period of the variance.

Recommendation

Pursuant to 260.405, RSMo, the department recommends that the Commission grant a variance to the Ford Motor Company Assembly Plant in Claycomo in accordance with its petition. The effect of this variance will be to excuse the facility from compliance with 40 CFR Part 265 Subpart BB for certain hazardous tank systems, as those regulations have been adopted by reference in the Missouri Hazardous Waste Management Regulations.

ORDER (HW-06-2V) The Missouri Hazardous Waste Management Commission hereby approves the recommendation above:

Signature _____	Date _____
Signature _____	Date _____
Signature _____	Date _____
Signature _____	Date _____
Signature _____	Date _____
Signature _____	Date _____
Signature _____	Date _____

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